

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, APRIL MUÑIZ, MARCUS
MARTIN, NATALIE ROMERO, CHELSEA
ALVARADO, JOHN DOE, and THOMAS
BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

**Civil Action No. 3:17-cv-00072-NKM
JURY TRIAL DEMANDED**

**RESPONSE TO DEFENDANT CANTWELL’S OBJECTIONS TO PLAINTIFFS’
EXHIBIT LIST**

In one of Defendant Cantwell’s many recent filings (ECF No. 1159), he avers that Plaintiffs failed to provide him with an exhibit list and therefore requests the Court exclude from trial all of Plaintiffs exhibits. Because Plaintiffs properly served Cantwell with their exhibit list, his motion should be denied.

Pursuant to the Court’s Amended Pretrial Order (ECF No. 991), the parties were to exchange exhibit lists on September 14, 2021. On September 14, 2021, Plaintiffs filed their exhibit list (ECF No. 1071) and properly served Cantwell by mail at USP Marion, 4500 Prison Rd., P.O. Box 2000, Marion, IL 62959 on that date. *See* Declaration of Makiko Hiromi dated October 12, 2021 ¶ 3 (“Hiromi Decl.”) (attached hereto as Exhibit A). Because that publicly-filed exhibit list inadvertently contained highly confidential information, on the morning of September 15, 2021, Plaintiffs mailed Cantwell a letter to USP Marion, 4500 Prison Rd., P.O. Box 2000, Marion, IL 62959, alerting him to the error, and requesting that he destroy the version of Plaintiffs’ exhibit

list sent to him on September 14. *Id.* ¶ 4. Plaintiffs also called the Clerk of the Court and asked that ECF No. 1071 be removed from the public docket. *Id.* ¶ 5. Plaintiffs subsequently filed a Motion to Seal Exhibit 1071 (ECF No. 1072), which was granted shortly thereafter (ECF No. 1073). *Id.* ¶¶ 6-7. On the afternoon of September 15, 2021, Plaintiffs filed and properly served Cantwell with a revised version of their exhibit list (ECF No. 1074) that removed all Highly Confidential information. *Id.* ¶ 8.

On September 22, 2021, Plaintiffs received a call from Ms. Katherine Siereveld, agency attorney for the Bureau of Prisons, who informed counsel that staff at U.S.P. Marion, where Cantwell was then incarcerated, had alerted her to Plaintiffs' letter asking that Cantwell destroy the version of Plaintiffs' exhibit list containing Highly Confidential information. *Id.* ¶ 9. Ms. Siereveld proposed that she provide Cantwell with the letter and the revised version of Plaintiffs' exhibit list, and let Cantwell know that the version containing Highly Confidential information would be stored in a secure location until he either consented to it being returned to Plaintiffs, or there was a court order requiring that it be provided to him. *Id.* ¶ 10. Plaintiffs told Ms. Siereveld that they would confer and confirm whether they were in agreement with her proposal. *Id.* ¶ 11. On September 23, 2021, Plaintiffs left Ms. Siereveld a voicemail confirming Plaintiffs' agreement with her proposal. *Id.* ¶ 12.

On October 1, 2021, Plaintiffs filed and properly served Cantwell at USP Marion, 4500 Prison Rd., P.O. Box 2000, Marion, IL 62959 with Plaintiffs' Corrected and Amended Exhibit List (ECF No. 1140). *Id.* ¶ 13. On October 4, 2021, Cantwell filed his "Objections" to Plaintiffs' exhibit list claiming that he had not yet received Plaintiffs' exhibit list.

On October 6, 2021, Plaintiffs received an email from Nathan Simpkins, case manager at U.S.P. Marion, informing them that Cantwell had departed U.S.P. Marion on October 5, 2021, in

connection with his appearance at trial for the above-captioned matter, which is scheduled to begin on October 25, 2021. Declaration of Alexandra K. Conlon dated October 12, 2021 ¶ 2 (“Conlon Decl.”) (attached hereto as Exhibit B). On October 7, 2021, Plaintiffs’ counsel spoke with a member of the U.S. Marshall Service, who informed Plaintiffs that Cantwell is being held at Grady County Jail in Oklahoma and was expected to remain there for at least a week. *Id.* ¶ 3. On October 9, 2021, Plaintiffs mailed to Cantwell at his address at Grady County Jail a copy of Plaintiffs’ Corrected and Amended Exhibit List. *Id.* ¶ 4.

Cantwell’s motion to exclude all of Plaintiffs exhibits should be denied. For each and every filing related to Plaintiffs’ Exhibit list, Plaintiffs timely and properly served Cantwell by mailing him hard copies of those filings at his designated service address on the date of service for those filings. *See* Fed. R. Civ. P. Rule 5(b)(2)(C). In addition, upon learning that Cantwell had been transferred to a new location pending his arrival in Charlottesville for the trial in this matter, Plaintiffs sent Cantwell their Corrected and Amended Exhibit list to his address at U.S.P Grady. Because Plaintiffs timely and properly served Cantwell with their Exhibit List, Cantwell’s motion to exclude Plaintiffs’ exhibits must be denied. *See* Fed. R. Civ. P. Rule 26(a)(4) (requiring that disclosures be made in writing and served).

Date: October 12, 2021

Respectfully submitted,

/s/ Jessica Phillips

Jessica Phillips (*pro hac vice*)

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CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2021, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

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I hereby certify that on October 12, 2021, I also served the following non-ECF participants via mail or electronic mail:

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Dated: October 12, 2021

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